

teaches concave as opposed to convex scallops, it does not meet the limitation of "forward points."

With regard to claims 3-5, the Examiner concedes that "although the dimensions of the scallops are not disclosed [in Duprey] it appears that radius of the scallops is equal to or greater than  $d/2$  or  $d$ ." This is not standard for anticipation. A prior art reference must teach claim limitations. What "appears" to an Examiner cannot be the standard for rejection. Thus, apart from the fact that independent claim 1 is not anticipated by the prior art, claims 3-5 are not anticipated for different, additional reasons.

Claims 1 and 3-5 also stand rejected under 35 U.S.C. §102(b) over Harrison, U.S. Patent No. 1,181,135. Again, the Examiner contends that Harrison discloses "a plurality of concave scallops on the leading edge," but it does not. Although Harrison discloses an attachment with "inner scallops as at 7," once the attachment is secured, as it would be in all instances, the scallops are pointing backward such that they are no longer associated with the "leading edge," nor do the segments of the scallops "intersect at distinct forward points." Accordingly, anticipation is precluded in this case as well. Again, with respect to claims 3-5, the Examiner's opinion as to what "appears" to be the case in the prior art is not the standard for anticipation.

Claim 8 stands rejected under 35 U.S.C. §103(a) over Duprey in view of Johnson. The Examiner concedes that Duprey does not disclose stiffening ribs, but claims that it would have been obvious to modify Duprey "in order to strengthen the frame of the scoop." However, the device of Duprey is a *dustpan*. There would be no need for strengthening, such that *prima facie* obviousness would not be established. Indeed, "the dustpan 10 can be molded or cast by methods known in the art from materials known in the art, such as plastics, metals or rubber." (Duprey, column 3, lines 18-21). The fact that the Duprey dustpan could be made out of plastic further proves that strengthening is not an issue.

Based upon the foregoing comments, Applicant believes all claims are in condition for allowance. Questions regarding this application may be directed to the undersigned attorney by telephone, facsimile or electronic mail.

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**CERTIFICATE OF MAILING (37 CFR 1.8(a))**

I hereby certify that this paper (with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date indicated along below and is addressed to: Mail Stop AF, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

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